

FRIENDS OF RAYMOND CAPE

v.

TOWN OF RAYMOND et al.

Submitted on Briefs January 28, 2014

Decided March 6, 2014

Panel: ALEXANDER, and LEVY, SILVER, MEAD, GORMAN and JABAR, JJ

MEMORANDUM OF DECISION

The Friends of Raymond Cape (FRC), an unincorporated entity, appeals from a judgment entered in the Superior Court (Cumberland County, *Mills, J.*) dismissing its Rule 80B complaint seeking an order of mandamus to require the Town of Raymond to issue a moratorium pursuant to 30-A M.R.S. § 4356 (2013) on certain development applications. *See* 14 M.R.S. § 5301 (2013); M.R. Civ. P. 80B(a) Advisory Committee’s Notes to February 15, 1983, Order Amending Rule 80B (providing procedures for mandamus action). Contrary to FRC’s contention, the court did not err in dismissing its complaint and declining to substitute FRC members as real parties-in-interest because FRC failed to sufficiently plead that, as substituted parties, their members had standing. *See Gulick v. Bd. of Env’tl. Prot.*, 452 A.2d 1202, 1202-03 n.1 (Me. 1982) (stating that substitution of real party-in-interest for unincorporated association is warranted when real party “clearly has capacity, as well as standing,” to bring suit in their own name); *Tisdale v. Rawson*, 2003 ME 68, ¶¶ 16, 18-19, 822 A.2d 1136 (upholding the trial court’s substitution of real party because he demonstrated he had the requisite standing during his participation in the proceeding); *see also* M.R. Civ. P. 17(a).

Moreover, although the court construed FRC’s complaint as an appeal of

final agency action, we affirm the dismissal because the decision to adopt a moratorium is a legislative choice that is discretionary in nature, and thus FRC is not entitled to an order for mandamus relief. *See, e.g., Dunston v. Town of York*, 590 A.2d 526, 528 (Me. 1991); *Melanson v. Matheson*, 1998 ME 117, ¶ 1, 711 A.2d 117 (stating that we may affirm a judgment on different grounds than those relied on by the trial court).

Lastly, we decline to award Town of Frye Island sanctions for defending this appeal. *See* M.R. App. 13(f).

The entry is:

Judgment affirmed and motion for sanctions  
denied.

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**On the briefs:**

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Raymond Cape

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